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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 KENNETH TORRES A.,¹
12 Plaintiff,

13 v.

14 LELAND DUDEK, ACTING
15 COMMISSIONER OF SOCIAL SECURITY,²
16 Defendant.
17

Case No. 5:24-cv-00427-PD

**MEMORANDUM OPINION
AND ORDER REVERSING
AGENCY DECISION AND
REMANDING**

18 Plaintiff seeks review of the Commissioner's final decision denying his
19 application for Social Security Disability Insurance Benefits ("SSDI") and
20 Supplemental Security Income Benefits ("SSI"). For the reasons stated below,
21 the decision of the Administrative Law Judge is reversed, and the Court
22 remands this matter on an open record for further proceedings.
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25 ¹ Plaintiff's name is partially redacted in accordance with Federal Rule of Civil
26 Procedure 5.2(c)(2)(B) and the recommendation of the United States Judicial
Conference Committee on Court Administration and Case Management.

27 ² Leland Dudek became the Acting Commissioner of Social Security on February 18,
28 2025, and is substituted as Defendant in this suit. See 42 U.S.C. § 405(g).

I. Pertinent Procedural History and Disputed Issue

In a September 26, 2013 determination, Plaintiff was found disabled beginning June 1, 2010. [Administrative Record (“AR”) 84.] On May 4, 2017, the Commissioner found that he was no longer disabled as of May 1 of that year. [Id.] On July 20, 2021, Plaintiff filed new applications for DIB and SSI, alleging that he had been unable to work since November 18, 2020 [AR 299, 320], because of depression, “[a]phelotic [sic],” diabetes, seizures, insomnia, and “[o]ptisum [sic].” [AR 326.]

After his most recent applications were denied initially [AR 147-48] and on reconsideration [AR 209-10], he requested a hearing before an Administrative Law Judge [AR 225]. A hearing was held on February 1, 2023, at which Plaintiff, represented by counsel, testified, as did a vocational expert. [AR 42-80.] In a written decision issued May 31, 2023, the ALJ found him not disabled. [AR 17-35.]

Specifically, the ALJ found that under *Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1988), Plaintiff had rebutted the presumption of continuing nondisability by showing a “changed circumstance affecting the issue of disability.” [AR 17.] She found “new and material evidence related to findings concerning whether [Plaintiff] ha[d] an impairment or combination of impairments that [were] severe, and regarding [Plaintiff’s] residual functional capacity.” [AR 18.] Accordingly, she “d[id] not adopt all such findings from the final decision on the prior claim in determining whether [Plaintiff] [was] disabled with respect to the unadjudicated period.” [Id.] She then followed the requisite five-step sequential evaluation process to assess whether he was disabled under the Social Security Act (“SSA”). *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1996) (as amended), *superseded on other grounds by regulation as stated by Farlow v. Kijakazi*, 53 F.4th 485 (9th Cir. 2022); 20

1 C.F.R. §§ 404.1520(a), 416.920(a).

2 At step one, the ALJ found that Plaintiff had not engaged in substantial
3 gainful activity since November 18, 2020, the alleged onset date. [AR 20.]
4 His date last insured was September 30, 2022. [Id.]

5 At step two, the ALJ determined that Plaintiff had severe impairments
6 of “insulin-dependent diabetes mellitus,” seizures, depression, anxiety,
7 attention deficit hyperactivity disorder, and “possible learning disability
8 versus possible intellectual disability.” [Id.] She concluded that his carpal-
9 tunnel syndrome was not severe because it did “not significantly limit the
10 ability to perform basic work activities.” [Id.] His alleged autism was not a
11 medically determinable impairment because the record lacked “objective
12 medical signs or laboratory findings from an acceptable medical source.” [AR
13 22; see AR 22-23.]

14 At step three, she found that Plaintiff’s impairments did not meet or
15 equal any of the impairments in the Listing. [AR 23-24.]

16 At step four, she determined that he had the RFC to perform light work
17 except that he could

18 occasionally lift, carry, push or pull up to 20[]lbs, 10[]lbs or less
19 frequently; stand and/or walk 6 out of 8 hours and sit 6 out of 8
20 hours. Frequent balance, frequent all other postural activities
21 except no climbing ladders, ropes or scaffolds. No work at
22 unprotected heights or on dangerous moving machinery or other
23 hazards such as open bodies of water. Frequent fine and gross
24 manipulation bilaterally. He can understand, remember and
25 carry out simple routine tasks for up to 2 hours [sic] periods of
26 time with occasional interaction with the general public. There
27 should be minimal changes in workplace setting or routine. No
28 fast paced production or assembly line type work.

[AR 24-25.]

26 The ALJ concluded that Plaintiff was unable to perform his past
27 relevant work but could work as a merchandise marker, housekeeper, or mail
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1 sorter, positions that “exist[ed] in significant numbers in the national
2 economy.” [AR 34; see AR 33-34.] Accordingly, she found that he did not
3 meet the SSA’s definition of disability from the alleged onset date through his
4 DLI. [AR 35.]

5 Plaintiff raises three issues:

6 (1) Whether the ALJ erred in not finding that his seizure disorder
7 met Listing 11.02(B).

8 (2) Whether the ALJ considered all relevant evidence in formulating
9 his RFC.

10 (3) Whether the ALJ properly evaluated his subjective symptom
11 statements and testimony.

12 [See Dkt. No. 13 at 3-22.]

13 **II. Standard of Review**

14 Under 42 U.S.C. § 405(g), a district court may review the agency’s
15 decision to deny benefits. A court will vacate the agency’s decision “only if the
16 ALJ’s decision was not supported by substantial evidence in the record as a
17 whole or if the ALJ applied the wrong legal standard.” *Coleman v. Saul*, 979
18 F.3d 751, 755 (9th Cir. 2020) (citation and internal quotation marks omitted).
19 “Substantial evidence means more than a mere scintilla but less than a
20 preponderance; it is such relevant evidence as a reasonable person might
21 accept as adequate to support a conclusion.” *Id.* (citation and internal
22 quotation marks omitted); *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (same).

23 It is the ALJ’s responsibility to determine credibility and to resolve
24 conflicts in the medical evidence and ambiguities in the record. *Ford v. Saul*,
25 950 F.3d 1141, 1149 (9th Cir. 2020). “Where evidence is susceptible to more
26 than one rational interpretation,” the ALJ’s reasonable evaluation of the proof
27 should be upheld. *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir.
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2008); *Tran v. Saul*, 804 F. App'x 676, 678 (9th Cir. 2020).³

Error in Social Security determinations is subject to harmless error analysis. *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). Error is harmless if it is “inconsequential to the ultimate nondisability determination” or, despite the legal error, “if the agency’s path may reasonably be discerned.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014) (citation and internal quotation marks omitted).

III. Discussion

A. The ALJ Properly Found that Plaintiff’s Seizure Disorder Did Not Meet or Equal Listing 11.02(B)

1. Applicable Law

At step three of the disability-evaluation process, the ALJ must consider whether the claimant’s impairments meet or medically equal any of the impairments in the Listings. *See* §§ 404.1520(d), 416.920(d); *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). Listed impairments are those that are “so severe that they are irrebuttably presumed disabling, without any specific finding as to the claimant’s ability to perform his past relevant work or any other jobs.” *Lester*, 81 F.3d at 828 (citing § 404.1520(d)).

The claimant has the burden of proving that an impairment meets or equals a Listing. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012); *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). “To meet a listed impairment, a claimant must establish that he or she meets each characteristic of a listed impairment relevant to his or her claim.” *Tackett*, 180 F.3d at 1099 (emphasis

³ Although statements in unpublished Ninth Circuit opinions “may prove useful [] as examples of the applications of settled legal principles,” the Ninth Circuit has cautioned lower courts not to rely heavily on such memorandum dispositions particularly as to issues of law. *Grimm v. City of Portland*, 971 F.3d 1060, 1067 (9th Cir. 2020) (“a nonprecedential disposition is not appropriately used . . . as the pivotal basis for a legal ruling by a district court”).

1 in original). “To equal a listed impairment, a claimant must establish
 2 symptoms, signs and laboratory findings ‘at least equal in severity and
 3 duration’ to the characteristics of a relevant listed impairment[.]” *Id.* (quoting
 4 § 404.1526) (emphasis in original). “An ALJ must evaluate the relevant
 5 evidence before concluding that a claimant’s impairments do not meet or
 6 equal a listed impairment.” *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001).

7 Under Listing 11.02(B), a plaintiff must be found disabled if he shows
 8 that he has had “dyscognitive seizures” at least once a week for at least three
 9 consecutive months despite adherence to prescribed treatment. 20 C.F.R. pt.
 10 404, subpt. P, app. 1 § 11.02(B).

11 Dyscognitive seizures are characterized by alteration of
 12 consciousness without convulsions or loss of muscle control.
 13 During the seizure, blank staring, change of facial expression, and
 14 automatisms (such as lip smacking, chewing or swallowing, or
 15 repetitive simple actions, such as gestures or verbal utterances)
 16 may occur. During its course, a dyscognitive seizure may progress
 17 into a generalized tonic-clonic seizure.

18 *Id.* § 11.00H(1)(b).

19 **2. The ALJ’s Decision**

20 The ALJ found that “a review of the medical records and the discussion
 21 below demonstrates [Plaintiff’s] impairments do not meet the requirements of
 22 Listing 11.02.” [AR 23.]

23 **3. Analysis**

24 The ALJ properly found that Plaintiff’s impairments did not meet or
 25 equal Listing 11.02(B). First, to meet Listing 11.02(B), Plaintiff’s dyscognitive
 26 seizures had to have occurred at least once a week for at least three
 27 consecutive months despite adherence to prescribed treatment, as he
 28 acknowledges. [See Dkt. No. 13 at 3.] He points to no three-month period
 during which he met this standard. *See Carvalho v. Kijakazi*, No. 2:21-cv-

1 01099 CKD (SS), 2023 WL 4848493, at *6 (E.D. Cal. July 28, 2023) (finding
2 that Plaintiff did “not show[] harmful error with respect to” ALJ’s finding that
3 she did not meet Listing 11.02 because she did not show that she had seizures
4 for “at least 3 consecutive months”). He testified at the February 2023
5 hearing that he had “jerk” seizures about once a week and “sit-down” seizures
6 about once a month [AR 58-59], but he did not indicate how long that had
7 been the case. In May 2020, he reported that he “average[d] 7 sit downs a
8 month, and 15-20 jerks a month.” [AR 728.] But again, he did not indicate
9 how long that frequency had persisted. Similarly, he reported in May 2021
10 that he had “dark like movements 2-3 times a week,” but he didn’t state how
11 long that had been the case. [AR 710.]

12 This is significant because there were times when Plaintiff’s seizures
13 were less frequent and when he was not adhering to treatment, as the ALJ
14 noted. His seizures were noted to be “under control” in January 2021. [AR
15 26-27 (citing AR 742).] On November 18, 2021, he reported that his last
16 seizure was a month earlier, as the ALJ noted. [AR 28 (citing AR 1095).]
17 During office visits with a physician’s assistant in August and November
18 2022, he reported “no new seizures” and said his last one had been on October
19 18, 2021. [AR 1700, 1703.] At the November visit, he reported “occasional”
20 jerk movements, but he didn’t clarify how frequent “occasional” meant or state
21 how long they had been occurring. [AR 1703.] Therefore, the ALJ did not err
22 in finding that Plaintiff did not meet the frequency and duration
23 requirements of Listing 11.02(B). *See Carvalho*, 2023 WL 4848493, at *6.

24 Moreover, even if Plaintiff had shown that his dyscognitive seizures
25 were occurring with the requisite frequency and duration, he hasn’t
26 demonstrated that they happened “despite adherence to prescribed
27 treatment,” as required by Listing 11.02(B). In May 2021, he went to the
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1 emergency room for a seizure and admitted that he had “r[u]n out of” his
2 seizure medication and was not taking his normal dose, as the ALJ noted.
3 [AR 27 (citing AR 710).] And the ALJ correctly noted that during an
4 emergency-room visit for seizures in October 2021, staff observed that he had
5 been “non-compliant” with his seizure medications and had “forgot[ten] to
6 take his [seizure] medications for three days.” [Id. (citing AR 882).] At a
7 follow-up visit with neurology the following month, a physician’s assistant
8 noted Plaintiff’s “[q]uestionable compliance” with seizure medication, as the
9 ALJ observed. [AR 27-28 (citing AR 1096).] Accordingly, the ALJ did not err
10 in finding that Plaintiff failed to show that his seizures occurred “despite
11 adherence to prescribed treatment.” *See Melissa M. v. Comm’r Soc. Sec.*
12 *Admin.*, No. 2:24-cv-00528-JR, 2024 WL 4948851, at *1 (D. Or. Dec. 2, 2024)
13 (“ALJ did not err in finding plaintiff d[i]d not meet Listing 11.02(A) or
14 11.02(B) [because] even if plaintiff were to sufficiently prove that she me[t]
15 the frequency and duration requirements for either 11.02 listing, she c[ould]
16 not] show that she did so while compliant with medical treatment.”). Plaintiff
17 makes no argument that his seizure disorder equaled Listing 11.02(B) despite
18 not having met it. For all these reasons, the ALJ did not err in finding that
19 he failed to meet or equal Listing 11.02(B).

20 **B. The ALJ Erred in Formulating Plaintiff’s RFC**

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22 Plaintiff alleges that the ALJ erred in assessing his RFC by failing to
23 properly consider the medical evidence and opinions concerning his seizure
24 disorder, mental conditions, and hand limitations. [Dkt. No. 13 at 8-16.]
25 Because the ALJ erred in assessing his hand limitations, remand is required.
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1. Applicable Law

An RFC is “an assessment of an individual’s ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis.” SSR 96-8p, 1996 WL 374184, at *1 (1996). It reflects the most a claimant can do despite existing limitations. *Smolen v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996). An RFC determination must be based on all the relevant evidence, including the diagnoses, treatment, observations, and opinions of medical sources. §§ 404.1545, 416.945. The ALJ is responsible for translating and incorporating supported medical evidence into a succinct RFC. *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (as amended). It is the ALJ’s responsibility to resolve conflicts in the medical evidence and ambiguities in the record. *Ford*, 950 F.3d at 1149. When this evidence is “susceptible to more than one rational interpretation,” the ALJ’s reasonable evaluation should be upheld. *Ryan*, 528 F.3d at 1198.

An ALJ must consider and evaluate the persuasiveness of all medical opinions or prior administrative medical findings from medical sources. §§ 404.1520c(a) & (b), 416.920c(a) & (b). The factors for evaluating their persuasiveness include supportability, consistency, relationship with the claimant (including length of treatment, frequency of examinations, purpose of treatment, extent of treatment, and existence of an examination), specialization, and “other factors that tend to support or contradict a medical opinion or prior administrative medical finding” (including, but not limited to, “evidence showing a medical source has familiarity with the other evidence in the claim or an understanding of [the] disability program’s policies and evidentiary requirements”). §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

Supportability and consistency are the most important factors when determining persuasiveness. *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir.

2022). Supportability and consistency are explained in the regulations:

(1) Supportability. The more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be.

(2) Consistency. The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be.

§§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2). The ALJ may, but is not required to, explain how the other factors were considered.

§§ 404.1520c(b)(2), 416.920c(b)(2).

2. Medical evidence and opinions concerning Plaintiff's impairments

a) Seizure disorder

Plaintiff complains that the ALJ failed to properly consider medical evidence documenting his seizure disorder, but he makes no additional argument and cites no additional evidence; he simply references his argument that his seizure disorder met Listing 11.02(B). [See Dkt. No. 13 at 9.] As noted, the ALJ properly considered the evidence of Plaintiff's seizure disorder and found it to be a severe impairment. But the ALJ also correctly noted that Plaintiff frequently failed to comply with his medication schedule. [AR 27 (citing AR 710, 882, 1096).] And when he did comply, his seizure disorder was well controlled, as the ALJ noted. [Id. (citing AR 742); AR 28 (citing AR 1095, 1700, 1703).] Moreover, the ALJ accounted for Plaintiff's seizure disorder by limiting him to "no climbing ladders, ropes or scaffolds" and "[n]o work at unprotected heights or on dangerous moving machinery or other hazards such as open bodies of water." [AR 24.] Plaintiff neither addresses the limitations

1 the ALJ assessed nor identifies what additional limitations should have been
2 included or what evidence would support such limitations. See Burch, 400
3 F.3d at 683-84 (ALJ adequately considered plaintiff's impairment in RFC
4 determination because plaintiff did not "point[] to any evidence of functional
5 limitations due to [impairment] which would have impacted the ALJ's
6 analysis" and "there [was] no evidence . . . of any functional limitations as a
7 result of her [impairment] that the ALJ failed to consider"). Therefore, the
8 ALJ did not err in assessing Plaintiff's seizure disorder.

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10 **b) Hand limitations**

11 Plaintiff argues that the ALJ did not adequately account for his hand
12 limitations. [Dkt. No. 13 at 8-9, 14-15.] Specifically, he contends that the
13 ALJ's finding that his hand impairments were "not significantly limiting his
14 ability to perform basic work activities[] is clearly not consistent with or
15 supported by the medical evidence of record." [Id. at 14 (citation omitted).]
16 Indeed, for the reasons discussed below, the ALJ erred in not finding his hand
17 impairments to be severe, and the error was not harmless.

18 The ALJ noted that the medical records showed "complaints of hand
19 pain" and "notes of" carpal-tunnel syndrome, osteoarthritis, and tendonitis.
20 [AR 20-21.] For example, at an emergency-room visit in December 2021,
21 Plaintiff complained of bilateral hand pain for a week. [AR 21 (citing AR
22 1709); see AR 1708.] He continued to complain of hand pain, and in February
23 2022, he showed a positive Tinel's sign and tenderness, with decreased
24 sensation of all five digits but otherwise intact motor strength and sensation
25 of the bilateral upper extremities. [AR 21 (citing AR 1670).] An EMG study
26 showed "moderate to severe bilateral median neuropathy at the bilateral
27 wrists" [id. (citing AR 1679)], "as is typically seen in carpal tunnel syndrome"
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1 [AR 1679].

2 In July 2022, Plaintiff went to the emergency room complaining of hand
3 pain, and examination showed moderate tenderness and limited range of
4 motion in the left hand. [AR 21 (citing AR 1750).] At an emergency-room
5 visit in August 2022, he showed swelling and a positive Phalen’s test but was
6 negative for limited range of motion. [*Id.* (citing AR 1760).] And in October
7 2022, he went to the emergency room complaining of left-hand pain for two
8 weeks and reported that he was getting surgery for carpal-tunnel syndrome.
9 [Id. (citing AR 1764).] An examination showed moderate wrist tenderness but
10 negative left-wrist swelling, deformity, and limited range of motion. [*Id.*
11 (citing AR 1767).] In January 2023, he underwent left carpal-tunnel release.
12 [Id. (citing AR 1695).] The following month, he complained that pain from
13 carpal-tunnel syndrome “keeps him awake sometimes.” [AR 1848.]

14 The ALJ found that Plaintiff’s alleged hand impairment didn’t
15 significantly limit his ability to perform basic work activities. [AR 20.] But
16 she nonetheless — and contradictorily, given that none of the other
17 impairments she found to be severe would cause manipulative limitations —
18 formulated an RFC limiting him to pushing or pulling 20 pounds occasionally
19 and 10 pounds frequently and performing “frequent fine and gross
20 manipulation bilaterally.” [AR 24.] Those RFC findings are incompatible
21 with her finding Plaintiff’s hand impairment nonsevere. The nonsevere
22 finding was also inconsistent with the significant medical findings and
23 treatment for carpal-tunnel syndrome — including surgery — in the record.
24 [See AR 1670, 1679, 1695, 1708-09, 1750, 1760, 1767, 1774, 1848.] Therefore,
25 the ALJ erred in finding that his carpal-tunnel syndrome wasn’t a severe
26 impairment.

27 True, “an error at step two may be considered harmless where, as here,
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1 the ALJ moves to the next step in the analysis” and the decision reflects that
2 the ALJ adequately considered any limitations posed by the impairment at
3 step four or five. *Tadesse v. Kijakazi*, No. 20-16064, 2021 WL 5600149, at *1
4 (9th Cir. Nov. 30, 2021) (unpublished). But that is not the case here.
5 Although the ALJ discussed Plaintiff’s complaints of hand pain at step two
6 [see AR 21], she did not analyze them in any detail at step four or five [see AR
7 24-34]. In particular, the ALJ did not explain what evidence supported the
8 finding that he could frequently perform “fine and gross manipulation
9 bilaterally” [AR 24] despite findings of “decreased sensation of all five digits”
10 [AR 21 (citing AR 1670)] and “moderate to severe bilateral median neuropathy
11 at the bilateral wrists” [id. (citing AR 1679)], which ultimately required
12 surgical intervention in January 2023 [see AR 1695]. Because the ALJ failed
13 to explain the inconsistency, it is unclear how she would have weighed the
14 other evidence of Plaintiff’s hand impairment if she had analyzed it as severe.
15 Accordingly, the Court can’t trust the accuracy of the ALJ’s assessment of his
16 RFC. *See Perez v. Astrue*, 250 F. App’x 774, 776 (9th Cir. 2007) (remanding in
17 part because ALJ’s findings were “internally inconsistent” and thus “not
18 supported by substantial evidence”); *Gutierrez v. Colvin*, No. ED CV 15-889-E,
19 2016 WL 67680, at *1 n.1 (C.D. Cal. Jan. 4, 2016) (finding that remand was
20 appropriate because ALJ’s decision contained “internally inconsistent”
21 statements concerning whether plaintiff had “severe medically determinable
22 hearing impairment”); *Bridges v. Colvin*, No. CV 13-5618-E., 2014 WL
23 1370369, at *3 (C.D. Cal. Apr. 8, 2014) (“Material ambiguities and
24 inconsistencies in an ALJ’s decision generally warrant remand.”) (citation
25 omitted).

C. Remand for Further Proceedings Is Appropriate

Plaintiff also challenges the ALJ's evaluation of the mental-health evidence and of his subjective symptom statements. [Dkt. No. 13 at 15-22.] The ALJ should reevaluate those once she has properly considered Plaintiff's severe hand limitation and how that severity might have impacted his mental health and symptom statements, so the Court does not address those arguments. *See Negrette v. Astrue*, No. EDCV 08-0737 RNB., 2009 WL 2208088, at *2 (C.D. Cal. July 21, 2009) (finding it unnecessary to address further disputed issues when court found that ALJ failed to properly consider treating doctor's opinion and lay-witness testimony). On remand, the ALJ should reassess Plaintiff's RFC and his hand impairment, considering when the hand impairment became severe. For the DIB claim, the ALJ should assess the RFC only up to his date last insured of September 30, 2022. For the SSI claim, she must assess whether his surgery resolved his hand issues.

The decision whether to remand for further proceedings or order an immediate award of benefits is within the district court's discretion. *Harman v. Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000) (as amended). "When the ALJ denies benefits and the court finds error, the court ordinarily must remand to the agency for further proceedings before directing an award of benefits." *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017) (as amended). Indeed, Ninth Circuit case law "precludes a district court from remanding a case for an award of benefits unless certain prerequisites are met." *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (as amended Feb. 5, 2016) (citations omitted).

The district court must first determine that the ALJ made a legal error, such as failing to provide legally sufficient reasons for rejecting evidence. If the court finds such an error, it must next review the record as a whole and determine whether it is fully developed, is free from conflicts and ambiguities, and all essential

1 factual issues have been resolved.

2 *Id.* at 407 (citation omitted).

3 The issues concerning the assessment of Plaintiff's severe hand
4 impairment and his mental health, his subjective symptom statements and
5 testimony, and the RFC "should be resolved through further proceedings on
6 an open record before a proper disability determination can be made by the
7 ALJ in the first instance." *See Brown-Hunter v. Colvin*, 806 F.3d 487, 496
8 (9th Cir. 2015) (as amended); *see also Treichler*, 775 F.3d at 1101 (remand for
9 award of benefits is inappropriate when "there is conflicting evidence, and not
10 all essential factual issues have been resolved" (citation omitted)); *Strauss v.*
11 *Comm'r Soc. Sec. Admin.*, 635 F.3d 1135, 1138 (9th Cir. 2011) (same when
12 record does not clearly demonstrate claimant is disabled within meaning of
13 SSA). If the ALJ again finds no additional hand limitations, she can then
14 provide an adequate discussion of the medical evidence justifying her doing
15 so. Accordingly, the appropriate remedy is a remand for further
16 administrative proceedings.

17 **IV. Order**

18 Consistent with the foregoing and under sentence four of 42 U.S.C. §
19 405(g), IT IS ORDERED that judgment be entered REVERSING the Acting
20 Commissioner's decision, GRANTING Plaintiff's request for remand, and
21 REMANDING this action for further proceedings consistent with this
22 memorandum decision. A separate judgment will issue.

23
24 IT IS SO ORDERED.

25
26 Dated: March 17, 2025



27 PATRICIA DONAHUE
28 UNITED STATES MAGISTRATE JUDGE